

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Petition by Verizon New England, Inc. for  
Amendment of Cable Division's Form 500  
"Cable Operator's Annual Report of Consumer  
Complaints"

DTC 08-12

**REPLY COMMENTS OF CITY KNOWN AS TOWN OF WATERTOWN AND TOWN  
OF TYNGSBOROUGH**

In reply to the Petition of Verizon New England, Inc. for amendments to the Cable Division's Form 500, the Intervenor's Town of Watertown ("Watertown") and Town of Tyngsborough ("Tyngsborough") provide the following comments:

1. The Continuing Availability of Subscribership Numbers Within the Public Domain is Essential For Cable Television Issuing Authorities to Monitor the Compliance of Cable Operators With Their Legal Obligations Under M.G.L. c.166A, §9, As Well as to Monitor Compliance With Parallel Provisions Contained in Most Currently-Effective Licenses

See, accompanying Affidavit of William Hewig III, ¶¶3-6.

2. The Continuing Availability Of Subscribership Within The Public Domain Is Also An Essential Tool Which Issuing Authorities Need In Order To Conduct Effective License Renewal Negotiations In The Context Of A Competitive Market

See, accompanying Affidavit of William Hewig III, ¶¶7-12.

3. Verizon Has Failed To Make Its Case That Disclosure Of Subscribership Numbers In The Public Domain Has Somehow Adversely Affected Its Ability To Effectively Compete

The most recent petition of Verizon New England, Inc. has not effectively addressed or rebutted the following specifically set forth reasons relied upon by the Department of Telecommunications and Cable ("DTC") in its June 7, 2007 ruling on Motions for Confidential

Treatment filed by Verizon New England, Inc. (responding to a motion for confidential treatment dated February 1, 2007 and March 15, 2007).

First, Verizon did not address or persuasively rebut the point made by the DTC in its June 7, 2007 ruling (“DTC Ruling”) that other cable operators, such as RCN, have managed to enter and successfully compete in Massachusetts cable markets without requiring that their subscribership numbers be kept confidential. Secondly, Verizon failed to address or persuasively rebut the point raised in the DTC Ruling that Verizon’s allegations of “competitive harm” were merely “vague assertions” without specifics. Verizon has provided no further specifics in its most recent filing. Third, Verizon failed to address or persuasively rebut the point made in the DTC Ruling that the information Verizon proposes to shield from public scrutiny can in any event be derived from alternative methods, such as the simple arithmetic necessary to calculate subscriber numbers on the basis of the annual c.266A, §9 check delivered to each municipality. Alternatively, the DTC made the additional point that incumbent cable operators can, through a review of Verizon’s marketing materials and analysis of their own subscriber “churn” easily gain a very good sense of the number and locations of Verizon’s cable subscribers, and can easily determine where Verizon is focusing its marketing efforts, even without the availability of subscribership numbers. These points are important because they show that Verizon cannot meet its burden of proving the necessity for confidentiality where the information is “known generally in the industry.” See, DTC Ruling, p.8. Moreover, as the DTC pointed out in its June 7, 2007 Ruling, Verizon has made no effort to require municipalities to keep the amount of the annual Section 9 checks confidential, and accordingly even if its current petition is granted, Verizon’s purposes could still be completely frustrated. Reviewing all of these points, the DTC properly concluded that because the information could be obtained from other sources at the municipal

level, there is no compelling need for the DTC to protect the information from public disclosure filed at the state level.

With respect to Verizon's arguments that subscribership numbers are "competitively sensitive", Verizon has also failed to meet its burden of proof. It failed to rebut the point raised by the DTC in its June 7, 2007 Ruling that other cable operators, in a competitive environment, such as RCN, BELD, and NLD, have not sought protective treatment of their subscribership numbers, and have, nonetheless, been able to compete and survive. Verizon has failed to make any showing as to why its circumstances as a competitor within the Commonwealth ought to be treated any differently. Moreover, in view of the fact that under the current situation, where subscribership numbers are part of the public domain, Verizon has failed even to address the fact that whatever competitive disadvantage it may claim as a result of the disclosure of its own subscribership numbers, must likely be offset by the competitive advantage it ought to be able to gain by the disclosure of similar information by its competitors. In other words, the numbers are available to all within a competitive market, and Verizon has failed to demonstrate any reason why it may not benefit from the availability of subscribership numbers from its competitors to the same extent it claims its competitors can benefit from Verizon's numbers. Verizon's complaints, in conclusion, consist of little more than a litany of the burdens of having to participate within the rough and tumble world of a competitive marketplace.

4. Transparency Is Essential To The Proper Functioning Of A Competitive Market When The Participants Are Licensed By And Regulated By A Public Authority

As of the present writing, at least, cable operators within the United States, and within the Commonwealth of Massachusetts, must participate in a competitive marketplace in which their activities are still subject to some degree of regulation by public authority. By virtue of their regulatory capacity, public authorities have a responsibility to discharge their regulatory

obligations in an effective, open and competent manner. In order to do so, public authorities must have available the essential informational tools to ensure that the participants they license remain compliant with both federal and state statutes and regulations, and also the terms of the licenses they issue. The regulating authorities, including in particular within Massachusetts the DTC and the municipal issuing authorities, cannot faithfully discharge their duties if the cable operators whom they regulate are permitted to hide their activities behind a veil of secrecy. As a matter of public policy, all tools necessary for the state and municipal authorities to evaluate and determine compliance on the part of cable operators must be kept within the public domain.

Respectfully submitted,

TOWN OF WATERTOWN AND  
TOWN OF TYNGSBOROUGH

By their attorney,

/s/ William Hewig III  
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Date: May 12, 2009

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CERTIFICATE OF SERVICE

I, William Hewig III, hereby certify that on the below date, I served a copy of the foregoing Comments of Towns Known as Town of Watertown and Town of Tyngsborough, by electronic mail, to the following counsel of record:

Department of Telecommunications and Cable  
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Dated: May 12, 2009

/s/ William Hewig III  
William Hewig III

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